

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1077 OF 2005

S.C.Kapur ..Petitioner

Vs.

Basudev Parmeshwar Sadh
& Anr. ..Respondents

...
Mr. A.P.Mundergi with M/s. Manilal Kher
Ambalal & Co. for Petitioner
Mr. V.B.Konde-Deshmukh, A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI, J.

DATE : JULY 12, 2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of process issued by the learned M.M. 47th Court at Esplanade, Mumbai in C.C.No.1661/SS/2005. In the said case process is issued under Section 138 r.w. 141 of Negotiable Instruments Act.

3. For the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks from today.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary

parties.

6. The petitioner has already been granted exemption from personal appearance in the trial Court by order dated 25.4.2005. It is made clear that the learned Magistrate shall not insist on the personal appearance of the petitioner before the trial Court unless the learned Magistrate is of the opinion that the presence of the petitioner is absolutely necessary. In such case, on notice being given, the petitioner shall remain present before the trial Court on the date indicated by the trial Court.

7. Writ petition is disposed of.

[V.K.TAHILRAMANI, J.]